



DEPARTMENT OF COMMERCE

International Trade Administration

[A-821-828]

Certain Aluminum Foil from Russia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that certain aluminum foil (aluminum foil) from Russia is being, or is likely to be, sold in the United States at less than fair value (LTFV). The period of investigation is July 1, 2019, through June 30, 2020. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-4475.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). On September 29, 2020, the Aluminum Association Trade Enforcement Working Group and its individual members¹ (collectively, the petitioners) requested the imposition of antidumping and countervailing duties on aluminum foil from five

¹ The individual members of the Aluminum Association Trade Enforcement Group include Granges Americas Inc, JW Aluminum Company and Novelis Corporation. The petitioners indicated that Novelis Corporation acquired Aleris Corporation (including all of Aleris' aluminum foil-related operations), effective April 14, 2020.

countries.² Commerce initiated this LTFV investigation on October 19, 2020.³ On February 17, 2021, Commerce postponed the preliminary determination of this investigation, and the revised deadline is now April 27, 2021.⁴

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.⁵ A list of topics included in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>.

Scope of the Investigation

The product covered by this investigation is aluminum foil from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,⁶ the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).⁷ Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice*. For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments

² *See* Petitioners' Letter, "Certain Aluminum Foil from Armenia, Brazil, Oman, Russia, and Turkey – Petition for the Imposition of Antidumping and Countervailing Duties," dated September 29, 2020 (Petition).

³ *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Initiation of Less-Than-Fair-Value Investigations*, 85 FR 67711 (October 26, 2020) (*Initiation Notice*).

⁴ *See Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations*, 86 FR 9909 (February 17, 2021).

⁵ *See* Memorandum, "Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Certain Aluminum Foil from Russia," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ *See Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

⁷ *See Initiation Notice*.

timely received, *see* the Preliminary Scope Decision Memorandum.⁸ As discussed in the Preliminary Scope Decision Memorandum, Commerce is preliminarily not modifying the scope language as it appeared in the *Initiation Notice*.

The Preliminary Scope Decision Memorandum establishes the deadline to submit scope case briefs.⁹ There will be no further opportunity for comments on scope-related issues.

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Pursuant to sections 776(a) and (b) of the Act, Commerce has preliminarily relied upon facts otherwise available with adverse inferences for Rusal Marketing GmbH, Rusal Products GmbH, RTI Limited, JSC United Company Rusal –Trading House, JSC Rusal Sayanal, and JSC Ural Foil (collectively, Rusal). For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Section 733(d)(1)(A)(ii) of the Act provides that in the preliminary determination Commerce shall determine an estimated all-others rate for all producers and exporters not individually examined. Pursuant to section 735(c)(5)(A) of the Act, this rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters or producers individually investigated, excluding rates that are zero, *de minimis*, or determined entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, if the estimated weighted-average dumping margins established for all exporters and producers individually examined are zero, *de minimis*, or determined based entirely on facts otherwise

⁸ *See* Memorandum, “Antidumping and Countervailing Duty Investigations of Certain Aluminum Foil from the Republic of Armenia, Brazil, the Sultanate of Oman, the Russian Federation, and the Republic of Turkey: Preliminary Scope Decision Memorandum,” dated concurrently with this notice (Preliminary Scope Decision Memorandum).

⁹ Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and “Public Comment” section of this notice.

available, Commerce may use any reasonable method to establish the estimated weighted-average dumping margin for all other producers or exporters.

Commerce has preliminarily determined the estimated weighted-average dumping margin for Rusal entirely under section 776 of the Act. Pursuant to section 735(c)(5)(B) of the Act, Commerce's normal practice under these circumstances has been to calculate the all-others rate as a simple average of the dumping margins alleged in the Petition. However, because there is a single dumping margin alleged in the Petition (*i.e.*, 62.18 percent),¹⁰ we used that rate as the estimated weighted-average dumping margin for all other producers and exporters.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist:

| Exporter or Producer | Estimated Weighted-Average Dumping Margin (percent) |
|--|--|
| Rusal Marketing GmbH/ Rusal Products GmbH/ RTI Limited/ JSC United Company Rusal –Trading House/ JSC Rusal Sayanal / JSC Ural Foil | 62.18 |
| All Others | 62.18 |

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit as follows: (1) the cash deposit rate for the companies listed above will be equal to the company-specific estimated weighted-average dumping margin

¹⁰ See Petition; see also *Initiation Notice* at 85 FR 67714; see also Checklist, "Certain Aluminum Foil from Russia Antidumping Duty Investigation Initiation Checklist," dated October 19, 2020 at 8.

determined in this preliminary determination; (2) if the exporter is not a respondent identified above, but the producer is, then the cash deposit rate will be equal to the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise; and (3) the cash deposit rate for all other producers and exporters will be equal to the all-others estimated weighted-average dumping margin. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Normally, Commerce discloses its calculations and analysis performed to interested parties within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). However, because we applied AFA and did not perform any margin calculations, no disclosure will be made for this preliminary determination.

Verification

Because Rusal did not provide all of the information requested by Commerce and affirmatively stated that it would limit its participation in this investigation, we will not conduct verification of Rusal as part of this investigation.

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance, no later than 21 days after the date of publication of the preliminary determination.¹¹ Rebuttal briefs, limited to issues raised in these case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹² The deadlines for submitting case and rebuttal briefs on scope issues are in the Preliminary

¹¹ See 19 CFR 351.309(c)(1)(i); and 19 CFR 351.303 (for general filing requirements). Commerce has exercised its discretion under 19 CFR 351.309(c)(1)(i) to alter the time limit for submission of case briefs.

¹² See 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

Scope Decision Memorandum.¹³ Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.¹⁴

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

¹³ See Preliminary Scope Decision Memorandum.

¹⁴ See *Temporary Rule*.

On March 23, 2021, pursuant to 19 CFR 351.210(e), Rusal requested that Commerce postpone the final determination and that provisional measures be extended to a period not to exceed six months.¹⁵ In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) the preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise; and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If the final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of aluminum foil from Russia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: April 27, 2021.

Christian Marsh,
Acting Assistant Secretary for Enforcement and Compliance.

¹⁵ See Rusal Letter, "Certain Aluminum Foil from Russia: Request Postponement of Final Determination and Provisional Measures Period," dated March 23, 2021.

Appendix I

Scope of the Investigation

The merchandise covered by this investigation is aluminum foil having a thickness of 0.2 mm or less, in reels exceeding 25 pounds, regardless of width. Aluminum foil is made from an aluminum alloy that contains more than 92 percent aluminum. Aluminum foil may be made to ASTM specification ASTM B479, but can also be made to other specifications. Regardless of specification, however, all aluminum foil meeting the scope description is included in the scope, including aluminum foil to which lubricant has been applied to one or both sides of the foil.

Excluded from the scope of this investigation is aluminum foil that is backed with paper, paperboard, plastics, or similar backing materials on one side or both sides of the aluminum foil, as well as etched capacitor foil and aluminum foil that is cut to shape. Where the nominal and actual measurements vary, a product is within the scope if application of either the nominal or actual measurement would place it within the scope based on the definitions set forth above. The products under investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7607.11.3000, 7607.11.6090, 7607.11.9030, 7607.11.9060, 7607.11.9090, and 7607.19.6000.

Further, merchandise that falls within the scope of this proceeding may also be entered into the United States under HTSUS subheadings 7606.11.3060, 7606.11.6000, 7606.12.3045, 7606.12.3055, 7606.12.3091, 7606.12.3096, 7606.12.6000, 7606.91.3095, 7606.91.6095, 7606.92.3035, and 7606.92.6095. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Scope of Investigation
- V. Scope Comments
- VI. Affiliation and Collapsing as a Single Entity
- VII. Application of Facts Available and Use of Adverse Inference
- VIII. Recommendation

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